

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

:::

JUDGMENT

Khyali Ram.

vs.

Smt. Vijay Devi and others.

S.B.CIVIL SECOND APPEAL NO.85/2007
UNDER SECTION 100 CPC AGAINST THE
JUDGMENT AND DECREE DATED
15.12.2006 PASSED BY SHRI PRAKASH
GUPTA, DISTRICT JUDGE, CHURU IN
CIVIL APPEAL DECREE NO.34/1999.

DATE OF JUDGMENT ::: 19.3.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Pradeep Shah, for the appellant.

Mr. Manish Shishodia, for the respondents/caveators.

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BY THE COURT:

Heard learned counsel for the parties.

The appellant/defendant is aggrieved against the
concurrent finding of fact recorded by the two courts
below about the title of the property which was claimed

by the plaintiffs to be their. The defendants' plea that they were in possession of the suit property since last 50 years was rejected by both the courts below. Both the findings of facts are recorded on the basis of appreciation of evidence and are not vitiated by any reason.

In view of the above, I do not find any substantial question of law involved in this appeal and this second appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that the appellant may be allowed to stay in the suit property for two years because of the reason that the appellant is an old person as well as is having old possession.

Learned counsel for the respondents/caveators vehemently submitted that the appellant's possession was absolutely illegal and the suit was filed in the year 1981, therefore, no further time may be granted to the appellant in view of the fact that two courts below concurrently held that the plaintiffs are owners of the property and are entitled to mesne profits.

I considered this prayer of learned counsel for the appellant and looking to the facts of the case, this Court is of the view that the appellant be granted

time upto 31.3.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of two months from today that he shall hand over the vacant possession to the decree holder by or before 31.3.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the mesne profits upto 31.3.2008, entire decretal amount, costs of suit as awarded by the trial court and the appellate court, if due, within a period of three months from today before the trial court or directly to the decree holder, the decree under challenge shall not be executed till 1.4.2008.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

with the aforesaid concession, this appeal is dismissed.

S.Phophaliya

(PRAKASH TATIA), J.